

APPEAL NO. 172502  
FILED DECEMBER 20, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 21, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issue by deciding that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 11th quarter, June 17 through September 15, 2017. The appellant (carrier) appealed the ALJ's determination of entitlement arguing that the evidence is legally insufficient to support the decision. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

The parties stipulated, in part, that: the claimant sustained a compensable injury on (date of injury), which the Texas Department of Insurance, Division of Workers' Compensation (Division) determined resulted in an impairment rating of 15% or greater; the claimant's county of residence requires a minimum of three job search efforts each week of the qualifying period; and that the qualifying period for the 11th quarter of SIBs was from March 5 through June 3, 2017.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142. Section 408.142 references the requirements of Section 408.1415 regarding work search compliance standards. Section 408.1415(a) states that the Division commissioner by rule shall adopt compliance standards for SIBs recipients. 28 TEX. ADMIN. CODE §§ 130.100-130.109 (Rules 130.100-130.109), effective July 1, 2009, govern the eligibility of SIBs.

Rule 130.102(d)(1) provides that an injured employee demonstrates an active effort to obtain employment by meeting at least one or any combination of the following work search requirements each week during the entire qualifying period:

- (A) has returned to work in a position which is commensurate with the injured employee's ability to work;
- (B) has actively participated in a vocational rehabilitation program as defined in [Rule] 130.101 of this title (relating to [d]efinitions);
- (C) has actively participated in work search efforts conducted through the Texas Workforce Commission;

- (D) has performed active work search efforts documented by job applications;  
or
- (E) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The ALJ found that the claimant demonstrated an active effort to obtain employment each week during the entire qualifying period by performing the requisite number of job contacts. It was undisputed that the claimant performed three job searches in each week of the qualifying period in dispute.

Rule 130.102(c) provides that an injured employee has earned less than 80% of the injured employee's average weekly wage as a direct result of the impairment from the compensable injury if the impairment from the compensable injury is a cause of the reduced earnings. The carrier argues on appeal that the claimant's unemployment was not a direct result of his impairment from the compensable injury. In evidence is a signed Benefit Dispute Agreement (DWC-24) which states that the compensable injury of (date of injury), does not extend to a left shoulder rotator cuff tear, cervical radiculopathy, carpal tunnel syndrome of the left hand/wrist, subacromial impingement syndrome, left shoulder glenohumeral synovitis, and left shoulder acromioclavicular impingement syndrome. The DWC-24 was approved by a Division ALJ on May 4, 2015. In evidence is a narrative report from a designated doctor who examined the claimant on October 24, 2015, and opined that, with regard to the compensable injuries only, there is no disability from June 7, 2015, to the present for the lumbar strain, left shoulder strain, and left hand contusion. Further, in evidence is a Work Status Report (DWC-73) dated July 22, 2015, from the claimant's treating doctor which stated the claimant was allowed to return to work without restrictions as of July 22, 2015. A DWC-73 dated April 25, 2017, reflects the claimant was taken completely off work from April 25 through May 5, 2017. The diagnoses listed on the DWC-73 taking the claimant off work were complete rotator cuff tear and "other specified postproced [sic]." The report accompanying that DWC-73 reflects that the rotator cuff tear was to the left shoulder. As previously noted, the left shoulder rotator cuff tear was not part of the compensable injury as agreed to by the parties.

The ALJ's finding that the claimant's underemployment or unemployment is a direct result of the impairment from the compensable injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. *Cain v. Bain*, 709 S.W.2d 175 (Tex. 1986). We reverse the ALJ's "direct result" finding and render a new finding that the claimant's unemployment was not a direct result of his impairment from the compensable injury. Accordingly, we reverse the ALJ's

determination that the claimant is entitled to SIBs for the 11th quarter and render a new determination that the claimant is not entitled to SIBs for the 11th quarter.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RICHARD GERGASKO, PRESIDENT  
6210 HIGHWAY 290 EAST  
AUSTIN, TEXAS 78723.**

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Margaret L. Turner  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Carisa Space-Beam  
Appeals Judge